

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

WILLIAM and MARGARET CUFF, on
behalf of their minor son, B.C.,

Plaintiff,

-vs-

07 Civ. 10996 (WCC)

VALLEY CENTRAL SCHOOL DISTRICT,
and BARBARA KNECHT, sued in her
individual capacity,

Defendants.

-----X

**BERGSTEIN AFFIRMATION IN OPPOSITION TO DEFENDANTS'
RULE 12(b)(6) MOTION TO DISMISS THE COMPLAINT**

STATE OF NEW YORK)
)
COUNTY OF ORANGE)

STEPHEN BERGSTEIN, having been duly sworn, deposes and states:

1. This firm represents plaintiffs. I am respectfully submitting this affirmation in opposition to defendants' motion to dismiss the Complaint under Rule 12(b)(6). I am submitting two documents in connection with our response.
2. As outlined in our memorandum of law, "[w]hen determining the sufficiency of plaintiffs' claim for Rule 12(b)(6) purposes, consideration is limited to the factual allegations in plaintiffs' amended complaint, which are accepted as true, to documents attached to the complaint as an exhibit or incorporated in it by reference, to matters of which judicial notice may be taken, or to documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit." Brass v. American Film Technologies, Inc., 987 F.2d 142, 150 (2d

Cir. 1993).

3. The Complaint incorporates by reference two documents: (1) the drawing that plaintiffs' son, B.C., submitted as part of a classroom assignment which resulted in his suspension and (2) the School District's Code of Conduct. These documents place defendants' motion in context and this Court should review them in resolving this motion.
4. Exhibit 1 is a copy of the drawing.
5. Exhibit 2 is a copy of the Code of Conduct.

Dated: February 20, 2008


STEPHEN BERGSTEIN

EXHIBIT 1



EXHIBIT 2

VALLEY CENTRAL SCHOOL DISTRICT

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MONTGOMERY, NEW YORK 12549
TELEPHONE NUMBER: (845) 457-2400, EXT. 8115
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CODE OF CONDUCT

Effective July 1, 2001

Richard M. Hooley, Ed.D.
Superintendent of Schools

Readopted by
Valley Central School District
Board of Education
on Wednesday, July 11, 2007

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VALLEY CENTRAL SCHOOL DISTRICT

CODE OF CONDUCT FOR MAINTENANCE OF ORDER ON SCHOOL PROPERTY

The Valley Central School District, in accordance with Section 2801(2) of the New York State Education Law, hereby enacts the following Code of Conduct for maintenance of order on school property: *

A. Provisions regarding conduct, dress and language deemed appropriate and acceptable on school property, including a school function, and conduct, dress and language deemed unacceptable and inappropriate on school property and provisions regarding acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students and visitors on school property, including a school function, including the appropriate range of disciplinary measures which may be imposed for violation of such code, and the roles of teachers, administrators, other school personnel, the board of education and parents.

1. Conduct, Dress and Language Deemed Acceptable
 - a) Students – Student conduct, dress and language on school property shall be governed by articles “C” - “J” of this Code.
 - b) Employees – Conduct, dress and language for employees on school property shall be determined in accordance with law and collective bargaining agreements.
 - c) Contractors with the school district will be required to adhere to the district policy section regarding conduct, dress and language on school property, as applicable. See, B(5) of this Code of Conduct.
 - d) Visitors – Conduct, dress and language of visitors on school property shall be governed by Section “B(5)” of this Code of Conduct.

See Board Policies 5311.5, 5312, 5313, 5450, 5450.1, 8111, 8120, 8414

2. Roles of Stakeholders Implementing Appropriate Conduct on School Property:
 - (i) Teachers – Teachers should familiarize themselves with the requirements of this Code, including their rights and responsibilities in removal of disruptive students; referrals of “violent” students as defined in the Code; as well as reporting dangerous situations;
 - (ii) Administrators – Administrators should review and familiarize themselves with their obligations under this Code, including their role in the removal of disruptive students; procedures for dealing with “violent” students; as well as their role in enforcing the Code in a manner which will protect the safety and well being of various populations of the school while respecting individual rights;
 - (iii) Other School Personnel – Should familiarize themselves with the requirements of the Code and for reporting dangerous students.

* In the event of any dispute between the language of this Code of Conduct and the Board Policies cited throughout, the language of the Board Policies shall control.

- (iv) Board of Education – The Board’s role is to review and adopt this Code of Conduct in accordance with law, and to review, at least annually, the Code’s effectiveness and the fairness and consistency of its implementation;
- (v) Parents – Parents should recognize that education is a joint responsibility of both parents and the school community and should familiarize themselves with the Code.
- (vi) Students – It shall be the **right** of each student in the district to:
 - 1. have a safe, healthy, orderly and courteous school environment;
 - 2. have access to all district activities on an equal basis regardless of race, sex, national origin, or disability;
 - 3. have access to student government activities unless properly suspended from participation pursuant to the district's discipline policy;
 - 4. address the Board on the same terms as any citizen of the district; and
 - 5. attend school and participate in school programs unless suspended from instruction and participation for legally sufficient cause as determined in accordance with due process of law.

It shall be the **responsibility** of each student in the school district to:

- 1. be familiar with, and abide by, this Code of Conduct and all district policies, rules and regulations pertaining to student conduct;
- 2. work to the best of his/her ability in all academic and extracurricular pursuits and strive toward the highest level of achievement possible;
- 3. conduct him/herself, when participating in or attending school-sponsored extracurricular events, as a representative of the school district, and as such, hold him/herself to the highest standards of conduct, demeanor and sportsmanship;
- 4. be in regular attendance at school and in class;
- 5. contribute to the maintenance of an environment that is conducive to learning and to show due respect to other persons and property; and
- 6. make constructive contributions to the school and to report fairly the circumstances of school-related issues.
- 7. report to appropriate school personnel ~~threats of danger,~~ and/or physical violence to others and/or destruction of property.

See Board Policy 5311

B. Standards and procedures to assure security and safety of students and school personnel.

1. Safety of Students

The Board of Education encourages and supports all rules and regulations that must be implemented to provide a safe and healthy environment for all students. The provisions of this section will be addressed through board policy. The safety of students shall be assured through close supervision of students in all school buildings and on school grounds, and through special attention to:

- a. maintenance of a safe school environment;
- b. observation of safe practices on the part of school personnel and students, particularly in those areas of instruction or extracurricular activities that offer special hazards;
- c. provision of safety education for students, particularly laboratory courses in science, technology courses, and health and physical education;
- d. provision, through the school nurse, of first aid care for students in case of accident or sudden illness; and
- e. alerting the school nurse to all accidents. An accident report shall be completed and filled for each accident. **See Board Policy 5450**

2. Notification of Sex Offenders

The Board of Education also acknowledges the efforts of local law enforcement to notify the district when a person with a history of sex offenses against a child is being paroled or released into the community, in accordance with the provisions of the Sex Offender Registration Act, commonly known as Megan's Law. The purpose of this notification is to protect members of the community, particularly children, by notifying them of the presence of individuals in their midst who may present a danger. Consistent with its duty to protect students under its care, the district shall cooperate with local law enforcement agencies in this endeavor.

The Superintendent of Schools shall ensure the dissemination of such information, as appropriate, provided by local law enforcement officials pursuant to Megan's Law to all staff who might come into contact with the offender in the course of doing their jobs, including Building Principals, staff who issue visitors' passes, bus drivers, custodians, playground monitors, security personnel, and coaches. All other staff members and community residents shall be informed of the availability of such information, upon written request. All staff requests for information provided by the law enforcement agencies shall be directed to the Building Principal. Requests for information from community residents shall be directed to the Superintendent. **See Board Policy 5450.1**

3. Reporting of Hazards

The Board of Education further recognizes its responsibility to provide an environment which is reasonably secure from known hazards. The Board therefore directs the Superintendent of Schools and all professional and support staff members to comply with occupational safety and health regulations, including the Hazard Communication Standard and "Right-to-Know" legislation.

The Superintendent will direct appropriate personnel to develop and oversee a written hazard communication program. Such program will include the following:

- a. the acquisition, maintenance and review of Material Safety Data Sheets (MSDS's) for all known hazardous materials on district property;
- b. the compilation of a hazardous materials inventory;
- c. employee training in hazardous materials management and protection; and
- d. the recording of all incidents involving exposure to known hazardous materials.

The district will comply with the requirements for the visual notification of pesticide spraying as set forth in the Environmental Conservation Law.

It is the responsibility of the entire school community to report any unsafe building or equipment conditions to the main office as soon as possible. In addition, designated administrators will provide notice of hazardous materials within 72 hours of an employee's request. **See Board Policies 8111, 8115**

4. Students and Staff Reporting Unsafe Conditions

The Board of Education also seeks to ensure the safety of students and employees of the district while on district property.

The Board and administrative staff, in cooperation with students and employees, will take reasonable measures to prevent accidents on the school premises.

Any dangerous conditions involving equipment or buildings or any unsafe practices by anyone in the building or on the grounds of the district are to be immediately reported to the Building Principal and/or Head Custodian.

Unless specifically authorized, all motorized vehicles are prohibited from use on school property.

The 15 mile per hour speed limit is to be observed and other posted signs on school grounds are to be obeyed.

Formal objective investigations of all accidents or unsafe conditions are to be immediately conducted by the Building Principal and the results of the investigation are to be presented to the Superintendent in a written report. The results of selected investigations should be communicated to

employees and students for the purpose of determining how the accident might have been avoided. See **Board Policy 8120**

The Superintendent of Schools and Building Principals shall cooperate with the governmental agencies on matters of safety. The district has determined that BUS-CAMS will be used to assist in the enforcement of transportation rules. They shall establish and check loading and unloading procedures at each school and student conduct on buses. The Superintendent shall arrange for bus emergency drills, including instruction in the use of windows as a means of escape in case of fire or accident, to take place a minimum of three times during the school year. Such drills shall include such instruction and be held at such times as required by the Regulations of the Commissioner. See **Board Policy 8414**

5. Visitors to Schools

Visitors to the schools of the district shall be governed by the following rules:

- a. Each building principal shall establish and maintain a safety plan outlining the process to authorize visitors to his/her school. Such plans shall be submitted to the superintendent of schools for approval, and thereafter be made available in the school.
- b. The building principal must be contacted by the person or group wishing to visit, and prior approval must be obtained for the visit.
- c. Parents or guardians wishing to speak with a specific teacher concerning the progress of a child must make an appointment with the teacher, in addition to obtaining the permission of the building principal.
- d. All visitors must immediately report to the main office, sign in with picture identification, and be issued a visitor's permit, which must be displayed at all times. The permit must be returned to the main office and the visitor must sign out at the conclusion of the visit.
- e. Visitor's permit shall not be required for school functions open to the public, whether or not school-related.
- f. Parents are encouraged to visit guidance counselors, school nurses, school psychologists and other support personnel, by appointment, in order to discuss any school-related problems or concerns the parent may have regarding the student.
- g. Any visitor wishing to inspect school records or interview students on school premises must comply with all applicable board policies and administrative regulations. In questionable cases, the visitor shall be directed to the superintendent's office to obtain written permission for such a visit.
- h. The principal is authorized to take any action necessary to secure the safety of students and school personnel. Unauthorized visitors or visitors displaying inappropriate conduct, dress or language shall be requested to leave school premises immediately, and will be subject to arrest and prosecution for trespassing, pursuant to the New York State Penal Law, if they refuse. See **Board Policies 1240-R, 1500, 1520-R**

C. Provisions for the Removal from the Classroom and from School Property, Including a School Function of Students and Other Persons Who Violate the Code.

(i) Students

Teachers will have the authority to remove **disruptive** students (as defined below) for up to two days in accordance with the process described. The removal from class applies to the class of the removing teacher only.

Disruptive Pupil – One who is substantially disruptive of the educational process or substantially interferes with the teacher's authority over the classroom.

Removal – means that students are precluded from returning to the class of the teacher from which they were removed.

Process for Removal of a Disruptive Student –

1. If the student does present a danger or an ongoing threat of disruption to the academic process, removal can be immediate, but teacher must provide removed student an opportunity to present his/her version of the events within 24 hours of removal.
2. If the student does not present a danger or an ongoing threat of disruption to the academic process, before removal teacher must provide student with explanation as to why being removed, and an opportunity to present his/her version of the events.
3. Within 24 hours of removal, parents must be notified by principal of removal and reasons for removal.
4. Informal conference – If the pupil denies the charge, an opportunity for informal hearing must take place with parents and principal within 48 hours of removal.
5. Principal's determination – The principal must make determination by close of business on the day following the informal conference to either uphold or reverse determination (determination can only be reversed if finding lacks substantial evidence, inconsistent with code of conduct, a violation of law, or if conduct warrants suspension). The principal may designate a school district administrator (e.g., an assistant principal) to carry out the principal's functions in this regard. No pupil removed by a teacher may return until: (a) the principal or designee makes a final determination, or (b) the period of removal expires, whichever is less.

Continued Educational Programming – In the event of teacher removal of a disruptive student in accordance with this Code of Conduct, continued educational programming will be provided during the period of removal as soon as is practicable. The type of continued educational programming will vary depending upon the student's individual needs but may consist of, for example, study hall; in-school suspension; or other instruction as provided by the teacher and determined by the principal.

(ii) Staff

Removal shall be determined in accordance with applicable law and collective bargaining agreement.

(iii) Visitors and Contractors

Removal of contractors and visitors will be accomplished in accordance with section B(5) of this Code of Conduct.

D. Provisions for detention, suspension and removal from the classroom of students, consistent with §3214 and other applicable federal, state and local laws including provisions for the school authorities to establish policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom, placed in detention, or suspended from school.

- (i) "Violent" pupils – Teachers shall report and refer a "violent" pupil (as defined below) to the principal for appropriate action under the Code of Conduct, and a minimum suspension period in accordance with section "M" of this Code of Conduct.

For purposes of this section, a "violent" pupil is an elementary or secondary student under 21 years of age who on District property, on school busses, or at school activities:

- (1) commits an act of violence upon a teacher, administrator or other school employee;
- (2) commits an act of violence upon another student or any other person lawfully upon District property, school busses, or at school activities;
- (3) possesses what appears to be a gun, knife, explosive or incendiary bomb or other dangerous instrument capable of causing death or physical injury;
- (4) displays what appears to be a gun, knife, explosive or incendiary bomb or other dangerous instrument capable of causing death or serious bodily injury;
- (5) threatens to use any instrument that appears capable of causing physical injury or death;
- (6) intimidates others in word, action, or dress;
- (7) knowingly and intentionally damages or destroys the personal property of a teacher, administrator, other school district employee, or any person lawfully upon school district property, or knowingly and intentionally damages or destroys school district property; or
- (8) harasses another student or member of the school community on the basis of race, gender, sexual orientation, disability, age, religion or national origin.

Serious and/or flagrant violations of the district's code of conduct can result in an immediate Superintendent of Schools' hearing. A student may be suspended from school or subjected to other disciplinary action when such student:

1. engages in conduct which is:
 - a. disorderly, i.e., fighting or engaging in violent behavior, threatening another with bodily harm, intimidation of students or school personnel, making unreasonable noise, using abusive language or gestures, including racial or ethnic remarks which are improper; or is
 - b. insubordinate, i.e.,
 - i. failing to comply with the lawful directions of teachers, school administrators or other school employees in charge of the student;
 - ii. missing or leaving school without permission; or
 - iii. making an audio and/or video recording, including still photographs during any portion of the school day, or on busses, or at school related activities, without the express authorization of appropriate school personnel;

- iv. failing to comply with school rules related to cell phones, iPods, and other electronic devices
- 2. engages in any of the following forms of academic misconduct:
 - a. missing or leaving school without permission; and/or
 - b. plagiarism; and/or
- 3. engages in conduct violative of the Board's rules and regulations for the maintenance of public order on school property or at school events, i.e., vandalism or graffiti, arson, smoking, theft, truancy, possession/use/sale/transfer or facilitation thereof of alcohol and/or drugs, weapons and explosive devices. Further, a student shall not be under the influence of alcohol and/or drugs on school property or at school events.
- 4. trespassing. A student or unauthorized person is not permitted in any school building, other than the one that he/she regularly attends, without permission from the Building Principal or designee. Should a student be found in a building without permission, the necessary authorities will be called and trespassing charges will be lodged against the student. **See Board Policy 5312**
- 5. is a "violent" pupil as defined above.
- 6. is "repeatedly substantially disruptive" as defined in Educ. Law § 3214. **See Board Policy 5313.3**

The range of penalties which may be imposed for violations of the student disciplinary code includes the following:

- 1. verbal warning
- 2. written notification to the parents
- 3. probation
- 4. reprimand
- 5. suspension from transportation
- 6. suspension from extracurricular activities
- 7. suspension of other privileges
- 8. exclusion from a particular class
- 9. in-school suspension
- 10. out-of-school suspension
- 11. Superintendent's hearing
- 12. referral to appropriate authorities

Depending upon the nature of the violation, it is the desire of the Board of Education that student discipline be progressive, i.e., a student's first violation should merit a lighter penalty than subsequent violations. It is also the Board's desire that an employee or agent take into account all other relevant factors in determining an appropriate penalty. The above penalties may be imposed either alone or in combination. Such penalties will be imposed by the Superintendent of Schools or with his/her permission. **See Board Policy 5313**

On appeal to the Board of Education for a long term suspension, an early return may be conditioned upon a pupil's voluntary completion of approved counseling or specialized classes. **See Board Policy 5313.3R**

E. Disciplinary Measures to Be Taken in Incidents Involving the Possession or Use of Illegal Substances or Weapons, the Use of Physical Force, Vandalism, Violation of Another Student's Civil Rights and Threats of Violence.

i) For any of the above violations, the range of penalties which may be imposed upon students (in accordance with Educ. Law § 3214, Part 100 of the Commissioner's Regulations, and this Code of Conduct) pursuant to the student disciplinary code which includes the following:

1. verbal warning
2. written notification to the parents
3. probation
4. reprimand
5. suspension from transportation
6. suspension from extracurricular activities
7. suspension of other privileges
8. exclusion from a particular class
9. in-school suspension
10. out-of-school suspension
11. Superintendent's hearing
12. referral to appropriate authorities

Depending upon the nature of the violation, it is the desire of the Board of Education that student discipline be progressive, i.e., a student's first violation should merit a lighter penalty than subsequent violations. It is also the Board's desire that an employee or agent take into account all other relevant factors in determining an appropriate penalty. The above penalties may be imposed either alone or in combination. Such penalties will be imposed by the Superintendent of Schools or with his/her permission. **See Board Policy 5313**

ii) Detention will be accomplished in accordance with § 5313.1 of the District's policy.

The Board of Education believes that detention is an effective method of discipline for students. Students may be assigned detention by teachers and/or administrators. Transportation will be made available for students who are assigned a detention and who need a ride home. The teacher/administrator supervising the detention period will be responsible for dismissing the student in time for such transportation. **See Board Policy 5313.1**

The Board of Education recognizes the importance of school attendance. Therefore, suspension from school must be viewed as a last resort in dealing with student disciplinary infractions. The Board also recognizes the need to remove unruly or disruptive students from the regular class so that learning can take place in the classrooms.

The Board directs the Superintendent of Schools to develop an in-school suspension program. The program should provide appropriate supervision in the in-school suspension rooms and guidelines for the imposition of an in-school suspension. **See Board Policy 5313.2**

iii) The responsibility for student dress and general appearance rests with individual students and parents. However, the Board of Education requires students, employees and visitors to attend school in appropriate dress that meets health and safety standards and does not interfere with the learning process. The Board also requires students, employees and visitors to wear appropriate protective gear in certain classes (e.g., home economics, shop, P.E.). In addition, the Board prohibits attire bearing an

expression or insignia which is obscene or libelous, which advocates racial or religious prejudice, or which displays and/or encourages the use of drugs, alcohol or tobacco. **See Board Policy 5311.5**

F. Procedures by Which Violations Are Reported, Determined, Discipline Measures Imposed and Discipline Measures Carried Out.

(i) The Board of Education believes that each student can be expected to be responsible for his/her own behavior. The school administration shall develop and disseminate rules of conduct, focusing on personal safety and respect for the rights and property of others to be consistently applied in the classrooms and through the schools. Students who fail to meet this expected degree of responsibility and violate school rules will be subject to appropriate disciplinary action and more regulated supervision.

Discipline is most effective when it deals directly with a problem at the time and place it occurs, and in a way that is fair and impartial. Therefore, before seeking outside assistance, teachers will first use all their positive resources to create a change of behavior in the classroom.

Disciplinary action, when necessary, will be firm, fair, and consistent in order to be most effective in changing behavior.

(ii) Early Identification and Resolution of Student Discipline Problems

Pupil service personnel, administrators, teachers and others will report students to the Building Principals when they believe such students present a discipline problem. If the Principal suspects that the problem may be manifestation of a disability, he/she will refer the matter to the Committee on Special Education in the manner prescribed by the Commissioner's Regulations and by district policy.

(iii) Individuals' off-campus behavior which jeopardizes the safety and/or welfare of school staff and students, and/or damages property and has a nexus to a disruption of the educational process will face disciplinary action in a manner consistent with school practices and procedures.

This includes but is not limited to use of the internet, alcohol and/or drugs, violence, harassment, and other infractions that violate the New York State Penal Law.

(iv) Discipline Policy for Students with Disabilities

Students with disabilities will be suspended in accordance with the procedures established under applicable federal and state law and regulation. **See Board Policies 5310, 5311**

The Board of Education assures that students of the district shall have all the rights afforded them by federal and state constitutions and statutes. The district recognizes all federal, state and local laws in connection with these rights and reminds students that certain responsibilities accompany the rights they are given. **See Board Policy 5313.3R**

G. Provisions Ensuring this Code and the Enforcement Thereof Are in Compliance with State and Federal Laws Relating to Students with Disabilities.

Discipline issues regarding students with disabilities under Section 504 will be referred to the appropriate Section 504 accommodation team for processing. Code of Conduct issues pertaining to students classified under IDEA will be referred to the Committee for Special Education.

H. Provisions Setting Forth the Procedures by Which Local Law Enforcement Agencies Shall Be Notified of Code Violations Which Constitute a Crime.

In accordance with consultation with local law enforcement, it is the district's understanding that the following types of conduct are generally referable to law enforcement as crimes:

- forcible sexual offenses
- use or possession of weapons
- drug offenses
- assaults resulting in serious physical injury
- serious threat which a reasonable person would perceive as placing a person or persons in danger

The usual contact between the district and law enforcement parties will be the school resource officer. See Board Policy 5313

I. Provisions Setting Forth the Circumstances under and Procedures by Which Persons in Parental Relation to the Student Shall Be Notified of Code Violations.

Notification of persons in parental relation of the fact that a code violation has occurred will be accomplished in accordance with the procedure for removal of disruptive students and the due process rights of students referenced above.

J. Provisions Setting Forth the Circumstances under and Procedures by Which a Complaint in Criminal Court, a Juvenile Delinquency Petition or Person in Need of Supervision Petition as Defined in Articles Three and Seven of the Family Court Act Will Be Filed.

The district will observe all applicable procedures under the Family Court Act for filing of PINS petitions, Juvenile Delinquency petitions and it will follow the appropriate sections of Penal Law and Criminal Procedure Law and other statutes for filing criminal complaints. See Board Policy 5161

K. Circumstances under and Procedures by Which Referral to Appropriate Human Service Agencies Shall Be Made.

Referrals to appropriate home service agencies will be provided through a list maintained by the Committee on Special Education or the Child Study Team or the 504 Team which list will be made available to parents where appropriate. See Board Policy 4321.3R

L. A Minimum Suspension Period, for Students Who Repeatedly Are Substantially Disruptive of the Educational Process or Substantially Interfere with the Teacher's Authority over the Classroom, Provided That the Suspending Authority May Reduce Such Period on a Case by Case Basis to Be Consistent with Any Other State and Federal Law. For Purposes of this Section, the Definition of "Repeatedly Are Substantially Disruptive" Shall Be Determined in Accordance with the Regulations of the Commissioner.

Where a student engaged in conduct which would define that student as "repeatedly substantially disruptive" (i.e., engaging in conduct requiring removal from classroom on four or more occasions during a semester), minimum suspension will be two days subject to modification on a case-by-case basis based upon the particular circumstances present.

M. A Minimum Suspension Period for Acts That Would Qualify the Pupil to Be Defined as a Violent Pupil Pursuant to a Paragraph a of Subdivision 2-a of § 3214 of the Education Law, Provided That the Suspending Authority May Reduce Such Period on a Case by Case Basis to Be Consistent with Any Other State and Federal Law.

Where a student engaged in conduct which would define that student as “violent” (i.e., engaging in conduct requiring removal from classroom on four or more occasions during a semester), minimum suspension will be three days subject to modification on a case-by-case basis based upon the particular circumstances present.